

August 26, 1976

THE LEGISLATIVE CLEARANCE FUNCTION

This paper briefly describes the major elements of the legislative clearance function which the Office of Management and Budget (OMB), working with other elements of the Executive Office of the President and with the agencies, carries out on behalf of the President. The function is designed to serve the needs of the President in carrying out his legislative responsibilities.

Background

The President's legislative responsibilities are founded in his constitutional duties and powers to: (1) require the opinion in writing of the principal officer in each of the executive departments, (2) take care that the laws are faithfully executed, (3) give the Congress information on the state of the Union, (4) recommend to the Congress such measures as he judges necessary, (5) approve or disapprove bills passed by the Congress, and (6) convene either or both Houses of Congress.

The legislative clearance function originated in the early 1920's in the Administration of President Harding. It grew out of the control over the budget given to the President by the Budget and Accounting Act of 1921. In its initial years, the clearance function was largely confined to bills involving expenditures, but it was later extended by President Roosevelt to all bills. A detailed description of the development of the legislative clearance function is contained in an article by Richard Neustadt, "The Growth of Central Clearance," in the American Political Science Review of September 1954.

OMB Circular A-19 sets forth the basic guidelines and procedures for carrying out the function. These procedures have been substantially the same for more than 35 years.

Description of Current Clearance Procedures

The clearance function covers agency legislative proposals, agency reports and testimony on pending legislation, and enrolled bills.

Legislative Proposals -- All bills which agencies wish to transmit to the Congress are sent to OMB for clearance.

2

There they are reviewed and a determination is made on what additional data and information are needed and what other agencies have substantial interests and should be asked to comment.

Agencies whose views are asked may favor a draft bill or have no objection. It is likely, however, that one or more of them will propose substantive or technical amendments, or perhaps a complete substitute. Divergent views may be reconciled by telephone or by letter. If appropriate, a meeting of the interested agencies will be arranged by OMB staff.

In its review of draft bills, OMB applies existing Presidential policies. If significant issues arise which are not covered by such policies, it seeks appropriate Presidential direction.

After review, analysis, resolution of issues, and obtaining appropriate policy guidance, OMB advises the proposing agency that (1) there is "no objection" from the standpoint of the Administration's program to the submission of the proposed draft bill to the Congress, (2) the proposed bill is "consistent with the Administration's objectives," or (3) the proposed bill is "in accord with the President's program." This "advice" is conveyed by the submitting agency to the Congress in its transmittal letter. On the other hand, if the agency is advised that its proposed bill conflicts with an important Administration objective, or is not in accord with the President's program, it may not transmit the bill to the Congress. Draft bills in the first category, i.e., "no objection" bills, are normally considered part of the agency's legislative program as contrasted to the President's legislative program which consists of bills in the second and third category.

The above are simply illustrative of the range of advice given, and there are many possible variations or qualifications, including suggested amendments to eliminate other agencies' objections. A more complete description of the forms and meaning of OMB advice on legislation is set forth in the attachment to this paper.

Reports on Pending Legislation -- If agencies are asked by congressional committees to report or testify on pending legislation or wish to volunteer a report, similar clearance procedures are followed. Agencies are given "advice" which they transmit in their reports or include in their testimony. In the case of reports, however, receipt of advice contrary to the views expressed in the proposed report does not require

an agency to change its views, but the agency is expected to review its position.

Enrolled Bills -- After Congress has completed action on a bill, it is enrolled and sent to the President for his approval or disapproval. The Constitution provides that the President shall take action within 10 days after receipt of the bill, not including Sundays.

To assist the President in deciding his course of action on a bill, OMB requests each interested agency to submit within 48 hours its analysis and recommendation in a letter to OMB, signed by the head of the agency or other Presidential appointee. OMB prepares a memorandum to the President on the enrolled bill which transmits these views letters and summarizes the issues and various views and recommendations. If an agency recommends disapproval or a signing statement, it is responsible for preparing a draft of an appropriate statement for the President's consideration.

Volume of Activity -- During the 93rd Congress, 29,396 bills and joint resolutions were introduced in the two Houses. The agencies submitted to OMB for clearance approximately 9,000 proposed reports on bills and 850 draft bills. OMB received congressional committee requests for its views on over 3,500 bills. The 93rd Congress enacted 872 public and private laws.

Relationship to the President's Legislative Program

The legislative recommendations of the President in his three regular annual messages -- State of the Union, Budget, and the Economic Report -- together with those in any special messages or other communications to the Congress generally constitute the President's legislative program. These recommendations have had their origin in many sources. One major source is the agencies themselves. Each year, along with their budgets, departments and agencies submit to OMB proposed agency legislative programs for the coming session of Congress.

Other major sources include bills introduced in the Congress, and proposals of commissions, panels, and task forces established by law or by administrative order to examine and recommend on particular subjects.

In conjunction with the legislative clearance function, OMB and the agencies assist the White House staff in the development of the President's program. Each President develops his legislative program, of course, through methods of his

4

own choice; and the form and nature of OMB and agency assistance vary, depending on the President's wishes. Almost always, however, it has involved the application of clearance procedures to the draft bills which are prepared to carry out the President's legislative recommendations.

The existence of the President's program gives the legislative clearance process coherence, a set of goals, and greater significance. It provides general guidance for the executive branch, both in shaping proposals which are not part of the President's program and in commenting on bills before the Congress.

Purposes of the Clearance Function

As noted earlier, the function is essentially a staff service for the President performed in accordance with his wishes and designed to assist him in carrying out his legislative responsibilities. It has several purposes, of which some assist the Congress and the executive branch agencies themselves, as well as the President:

- it provides a mechanism for bringing together and staffing out agency legislative proposals which the President may wish to include in his legislative program;
- it helps the executive agencies develop draft bills which are consistent with and which carry out the President's policy objectives;
- it is a means of keeping Congress informed (through the "advice" transmitted by the agencies) of which bills are part of the President's program and of what the relationship of other bills is to that program;
- it provides a mechanism for assuring that Congress gets coordinated and informative agency views on legislation which it has under consideration;
- it assures that bills submitted to Congress by one executive agency properly take into account the interests and concerns of other affected agencies and will therefore have the general support of such agencies;
- it provides a means whereby divergent agency views can be reconciled.

ATTACHMENT

Forms Of OMB Advice On Legislation

The purpose of giving "advice" on proposed or pending legislation is to indicate to the Congress what the relationship of legislation is to the President's program. This permits the President to give visible endorsement (or opposition) to those legislative items which are important to him and informs the Congress of a relationship that is of importance to it in its consideration and scheduling of legislation.

"Advice" is given to the agencies by OMB to incorporate in their letters transmitting draft bills to the Congress or in their written reports commenting on legislation pending in the Congress. It is also given to agencies when they submit proposed testimony to OMB for clearance, but the advice is usually not included in the oral testimony as delivered, except in cases where it would have a significant effect on a committee's consideration or would not otherwise become available to a committee through a written report.

The three basic forms of advice and their implications are set forth below:

1. "In accord (not in accord) with the program of the President." When an agency or a committee of the Congress is advised that enactment of a bill would be in accord with the program of the President, it means that the bill is of sufficient importance for the President to give it his personal and public support. That identification of the legislative proposal with the President is made in a variety of ways; e.g., by inclusion in one of his regular messages (State of the Union, Economic, Budget), a special message, speech, press conference, letter, or leadership meeting.

"Not in accord" advice indicates that a bill is so contrary to the President's legislative proposals or other policies or is otherwise so objectionable that were it enacted, a veto would be considered. It is not, however, necessarily a commitment to veto.

When "not in accord" or "not consistent with" (see below) advice is given to an agency with respect to a draft bill, the agency may not transmit its proposal to the Congress.

2. "Consistent (not consistent) with the Administration's objectives." "Consistent with" advice is used where the relationship of a legislative proposal to the Administration's objectives is direct and the Administration's expressed support is desirable but the item does not warrant personal identification with, or support by, the President. "Not consistent with" advice signals to the Congress that there are major objections to a bill, but does not indicate as clearly as "not in accord" advice that a veto would be considered if it were enacted.

3. "No objection." Advice that there is no objection to a bill from the standpoint of the Administration's program is given on the large number of agency draft bills that deal with matters primarily of agency concern and do not bear a direct or immediate relationship to the President's program or the Administration's objectives. In effect, such advice indicates to the Congress that OMB knows of no reason why the President would not approve the bill if the Congress should enact it.

Advice to an agency that there is no objection from the standpoint of the Administration's program to its submission of a report (or testimony) on a bill to a committee of Congress does not indicate any commitment as to ultimate Presidential approval or disapproval of the bill if it is enacted. Nevertheless, such "no objection" clearance does set up certain presumptions. If all agencies' views are favorable, the presumption is that no major objection to the bill is known and that the agencies affected will recommend Presidential approval if it becomes enrolled. If all agencies' views are adverse, the presumption is that the agencies may wish to recommend a veto if the bill becomes enrolled.

Infrequently, "no objection" clearance is given to agency reports expressing divergent views on the same bill. When this is done, it normally means that there is no objection to the bill if the Congress acts favorably after considering the adverse views. Occasionally, it means that the Administration's position is being reserved pending resolution of the agencies' differences, and this reservation may be explicitly stated. The interested agencies are advised of each other's differing views in these cases.

In some cases the advice given is qualified. For example, the advice may be that there would be no objection to enactment of the bill from the standpoint of the Administration's program if it were revised in specified respects.

Finally, if congressional time schedules do not permit an agency to transmit to OMB its proposed report or testimony in time for the normal coordination and advice, the agency is required to consult informally with OMB as to the advice to be included in its proposed report. OMB may advise it to state in the report that time has not permitted securing advice from OMB as to the relationship of the proposed report or testimony to the program of the President. Where appropriate, OMB may subsequently furnish advice on the report or testimony, which the agency then transmits to the Congress.

OFFICE OF MANAGEMENT AND BUDGET

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TO George L. Cary

- Take necessary action ☐
Approval or signature ☐
Comment ☐
Prepare reply ☐
Discuss with me ☐
For your information ☐
See remarks below ☐

FROM Naomi Sweeney

DATE 11-16-76

REMARKS

This may be of use to you during
the transition period.

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